

REMARKS

Claims 10-20 are now pending in the application.

In the Office Action, the claims 13, 14 and 16 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. It was asserted that the limitation “at least one” in those claims conflicted with the recitation in claim 11 from which they depend.

Claim 11 recites that the control device carries out a test to determine whether the gear change can be carried out with the clutch engaged, and makes the selection based on a result of the test. Claim 13 recites carrying out at least one of the selection and the test in some operating areas as a function of the intended gear for the gearwheel variable-speed transmission. In other words, the requirement of Claim 13 is satisfied if both the selection and test are carried out as a function of the intended gear, but also if only one of the selection and test are so carried out. In the latter case, the other one of the selection and test is still carried out, in agreement with claim 11, but is simply not carried out as a function of the intended gear. Thus, the requirement recited in claim 11 to carry out both selection and test is satisfied, with the additional requirement of doing so as a function of the intended gear being applied to one or both.

Similarly, claims 14 recites carrying out at least one of the selection and the test as a function of variables which describe an environment of the motor vehicle, and claim 16 recites carrying out at least one of the selection and the test as a function of variables which describe at least one of a roadway inclination, a roadway condition, an ambient temperature, a geodetic height and an ambient

pressure. As for claim 13, these claims do not preclude one of the selection and test from being carried out, but merely add a condition to carrying out one or more of those actions.

In view of the foregoing explanation, applicants respectfully submit that claims 13, 14 and 16 are definite.

Claims 10-20 were rejected in the Office Action as being anticipated by WO 02/060715 (WO '715). In particular, it was asserted on page 4 that WO '715 describes, in paragraphs [0029]-[0036] that the gear change is carried out with the clutch disengaged after an initial starting-up of the drive train. Applicants respectfully disagree. WO '715 describes a control for selecting a shift strategy for an automated transmission, in which it is determined whether to conduct a shift strategy retaining the master clutch engaged, or instead disengaging and re-engaging the master clutch. (Paragraph [0006].)

According to this reference, dynamic shifting is accomplished either by disengaging and then re-engaging the master clutch, or by maintaining the master clutch engaged. (Paragraph [0029].) WO '715 teaches to preferably carry out the shifts without activating the master clutch, however, for certain cases, the master clutch is disengaged. In particular, disengaging the clutch is recommended when shifting in low gears on a gradient, or other conditions where it is difficult to cause a zero driveline torque to obtain a smooth shifting without disengaging the clutch. (Paragraphs [0030]-[0032].)

WO '715 thus describes that it is preferred to speed up the engine with extra fuel to achieve zero driveline torque than to release the master clutch, unless the conditions make it difficult to achieve the zero driveline torque. Nothing in this reference describes or suggests carrying out a gear change with the clutch disengaged following an initial start up of the drive train, and when a malfunction is identified, as recited in claim 10. As explained in the specification, for example in paragraphs [0017]-[0018], what is meant by initial start up is the starting up of the drive train after the manufacture of the motor vehicle, or starting up after replacement of an element, for example of the drive machine, of the drive train. The time interval of the initial startup may be predetermined to be fixed, or may be ended after a number of conditions are satisfied, such as when the vehicle parameters which are taken into account in the selection process and the test are not yet all known.

Because the WO '715 reference does not describe or suggest carrying out a shift with the clutch disengaged when there is a malfunction or at the initial start up of the drive train, applicants respectfully submit that claim 10 is not anticipated and is allowable. The remaining claims depend from allowable claims, and at least for that reason are also submitted to be allowable.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #095309.56195US).

Respectfully submitted,

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